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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

STEFFON BARBER, an individual,

**Plaintiff,**

VS.

COUNTY OF SAN BERNARDINO  
and CHRISTOPHER ALFRED,

Defendants.

Case No. 5:22-cv-00625-KK-DTB

Assigned to:  
District Judge Kenly Kiya Kato  
Magistrate Judge David T. Bristow

## **JOINT PROPOSED DISPUTED JURY INSTRUCTIONS**

## Final Pretrial Conference

Date: 01/08/2026

Time: 10:30 A.M.

Place: Courtroom 3, 3<sup>rd</sup> Floor

## Trial

Date: 01/26/2026

Time: 8:30 A.M.

Place: Courtroom 3, 3<sup>rd</sup> Floor

1 Pursuant to Local Rule 16-4 and this Court's Civil Trial Order [Dkt. 39], The  
2 Parties hereby submit their Joint Proposed Disputed Jury Instructions. The Parties have  
3 redlined the competing instructions where feasible. The Parties reserve the right to  
4 amend these [Proposed] Jury Instructions, subject to any objections, motions *in limine*,  
5 and applicable Orders of the Court.

6 Respectfully submitted,  
7

8  
9 Dated: December 23, 2025                   LAW OFFICES OF DALE K. GALIPO  
10

11 By /s/ Dale K. Galipo  
12 Dale K. Galipo  
13 Renee V. Masongsong  
14 Atorneys for Plaintiff, Steffon Barber

15 Dated: December 23, 2025                   IVIE MCNEILL WYATT  
16 PURCELL & DIGGS  
17

By: s/ Rodney S. Diggs  
Rodney S. Diggs  
18 Attorney for Plaintiff, Steffon Barber

19 DATED: December 23, 2025                   **MANNING & KASS**  
20 **ELLROD, RAMIREZ, TRESTER LLP**  
21

22 By: /s/ Kayleigh Andersen  
23 Eugene R. Ramirez  
24 Kayleigh A. Andersen  
25 Attorneys for Defendants, COUNTY OF  
26 SAN BERNARDINO and DEPUTY  
27 CHRISTOPHER ALFRED  
28

No.	Title	Source	Page
1.	Evidence for Limited Purpose	Ninth Cir. 1.11	1
2.	Limiting Instruction re Evidence of Suspect Intent, Motive, or Plan Evidence Unknown to Officer During Incident	<i>Boyd v. City &amp; County of San Francisco</i> , 576 F.3d 938, 941-942 (9th Cir. 2009); <i>Estate of Chum v. City of Los Angeles</i> , 2014 U.S. App. LEXIS 19743, *2 (9th Cir. 2014); <i>Mendoza v. Gates</i> , 19 Fed. Appx. 514, 518-520 (9th Cir. 2001); <i>Casey v. Markgraf</i> (In re A.D.), 636 F.3d 555, 560 n. 2 (9th Cir. 2011); Fed. R. Evid. 401-402, 404	4
3.	Particular Rights – Fourth Amendment – Unreasonable Seizure of Person – Excessive Force	Ninth Cir. 9.25	9
4.	Standard for California Law Claims re Reasonableness Related to a Seizure is Governed by the U.S. Fourth Amendment	<i>Hayes v. County of San Diego</i> , 57 Cal.4th 622, 637-639 (2013); <i>Yount v. City of Sacramento</i> , 43 Cal.4th 885, 902 (2008); <i>Martinez v. County of Los Angeles</i> , 47 Cal.App.4th 334, 349-350 (1996); <i>Edson v. City of Anaheim</i> , 63 Cal.App.4th 1269, 1272-1273 (2009); <i>Lopez v. City of Los Angeles</i> , 196 Cal.App.4th 675,	15

		690-692 (2011); see also Cal. Gov. Code §§ 815.2, 820, 820.2, 820.4, 820.8, 821; <i>Munoz v. City of Union City</i> , 120 Cal.App.4th 1077, 1101-1103 (2004); <i>Brown v. Ransweiler</i> , 171 Cal.App.4th 516, 525 (2009); <i>Young v. County of Los Angeles</i> , 655 F.3d 1156, 1170 (9th Cir. 2011); <i>Hayes v. County of San Diego</i> , 736 F.3d 1223, 1232 (9th Cir. 2013); CACI 1300, 1301	
5.	Battery (Per Plaintiff: by Peace Officer (Deadly Force)	CACI 1305, 1305B	19
6.	Negligent Use of Deadly Force by Peace Officer – Essential Factual Elements	CACI 441	26
7.	Negligence – “Reasonableness”	<i>Hayes v. County of San Diego</i> , 57 Cal.4th 622, 632 (2013)	32
8.	Reasonableness Under California Law	<i>Hayes v. County of San Diego</i> , 57 Cal.4th 622, 632 (2013)	35
9.	Reasonableness and Split-Second Judgments	<i>Graham v. Connor</i> , 490 U.S. 386, 396-397 (1989); accord <i>Wilkinson v. Torres</i> , 610 F.3d 546, 550-551 (9th Cir. 2010).	38

10.	Comparative Negligence of Plaintiff	CACI 401, 405	41
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12.	Bane Act	<i>Reese v. County of Sacramento</i> , 888 F.3d 1030, 1043 (9th Cir. 2018) (citing <i>Cornell v. City and County of San Francisco</i> , 17 Cal. App. 5th 766, 801-802 (2017)).	48
13.	Damages – Mitigation	Ninth Cir. 5.3	52
14.	Damages if No Liability	CACI 3900	55
15.	Jurors Not to Consider Attorney Feed and Court Costs	CACI 3964	58
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18	Punitive Damages – Calculation	CACI 3942, Ninth Cir. 5.5	69

1           **DISPUTED JURY INSTRUCTION NO. 1.: EVIDENCE FOR LIMITED**  
2           **PURPOSE**  
3

4           Some evidence may be admitted only for a limited purpose.

5           When I instruct you that an item of evidence has been admitted for a limited  
6           purpose, you must consider it only for that limited purpose and not for any other  
7           purpose.

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9           **SOURCE: Ninth Circuit Manual of Model Jury Instructions, Civil (2017), § 1.11.**

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11          TO BE GIVEN \_\_\_\_\_

12          GIVEN AS MODIFIED \_\_\_\_\_

13          WITHDRAWN \_\_\_\_\_

14          REFUSED \_\_\_\_\_

1                   **PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED DISPUTED**  
2                   **JURY INSTRUCTION 1: EVIDENCE FOR LIMITED PURPOSE**

3                   Plaintiff does not believe this instruction is necessary at this time. Plaintiff's  
4 Motions in Limine seek to exclude certain evidence entirely. At this time Plaintiff  
5 does not anticipate any evidence coming in for a limited purpose.  
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1           **DEFENDANTS' ARGUMENT RE: EVIDENCE FOR LIMITED PURPOSE**

2           Defendants, by way of opposing Plaintiff's Motions *in Limine* to exclude  
3 certain evidence have requested that such evidence be admissible for a limited  
4 purpose. therefore, based upon the rulings on the Motions *in Limine*, the instruction is  
5 proper and necessary.

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1           **DEFENDANTS' PROPOSED DISPUTED JURY INSTRUCTION 2.:**  
2           **LIMITING INSTRUCTION RE EVIDENCE OF SUSPECT INTENT,**  
3           **MOTIVE, OR PLAN EVIDENCE UNKNOWN TO OFFICER DURING**  
4           **INCIDENT**

5           You are permitted to consider evidence of facts showing a suspect's intent,  
6 motive, or plan during an incident, even if such suspect intent-motive-plan facts were  
7 unknown to the peace officer at the time of the incident, where the offering party  
8 contends that such suspect intent-motive-plan facts corroborate (increase the likelihood  
9 of the existence of) facts that were actually observed and relied upon by that officer in  
10 that defendant officer's decision to use force during the incident.

11          Although an officer may not rely upon facts acquired after the incident to justify  
12 a use of force – for example, an officer may not contend that the officer considered facts  
13 acquired after the incident as though such facts were known to the officer during the  
14 incident itself – you are permitted to consider evidence showing a suspect's intent,  
15 motive, or plan during the incident where such suspect intent-motive-plan makes it more  
16 likely that the suspect acted during the incident consistently with the manner of suspect  
17 action observed and described by a peace officer or other witnesses.

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19          **SOURCE: SPECIAL:** *Boyd v. City & County of San Francisco*, 576 F.3d 938, 941-  
20 942 (9th Cir. 2009); *Estate of Chum v. City of Los Angeles*, 2014 U.S. App. LEXIS  
21 19743, \*2 (9th Cir. 2014); *Mendoza v. Gates*, 19 Fed. Appx. 514, 518-520 (9th Cir.  
22 2001); *Casey v. Markgraf (In re A.D.)*, 636 F.3d 555, 560 n. 2 (9th Cir. 2011); Fed.  
23 R. Evid. 401-402, 404.

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25          TO BE GIVEN \_\_\_\_\_  
26          GIVEN AS MODIFIED \_\_\_\_\_  
27          WITHDRAWN \_\_\_\_\_  
28          REFUSED \_\_\_\_\_

1           **PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED DISPUTED**  
2           **JURY INSTRUCTION 2: LIMITING INSTRUCTION RE EVIDENCE OF**  
3           **SUSPECT INTENT, MOTIVE, OR PLAN EVIDENCE UNKNOWN TO**  
4           **OFFICER DURING INCIDENT**

5           This instruction proposed by Defendants is argumentative and is not based on  
6 any model instruction. CACI 441, CACI 1305B, and the Ninth Circuit Model Jury  
7 Instruction on Excessive Force (9.25) adequately instruct the jury on Plaintiff's  
8 substantive claims. No special instruction is needed. Defendants' proposed  
9 instruction is also argumentative and invades the province of the jury by purporting to  
10 instruct them that Plaintiff Steffon Barber had some sort of plan, motive or intent  
11 when he reversed his vehicle, which is not supported by the evidence.

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1                   **DEFENDANTS' ARGUMENT RE: LIMITING INSTRUCTION RE**  
2                   **EVIDENCE OF SUSPECT INTENT, MOTIVE, OR PLAN EVIDENCE**  
3                   **UNKNOWN TO OFFICER DURING INCIDENT**

5                   Defendants, by way of opposing Plaintiff's Motions *in Limine* to exclude  
6 certain evidence have requested that such evidence be admissible for a limited purpose  
7 of evidence of Plaintiff's intent, motive, or plan. therefore, based upon the rulings on  
8 the Motions *in Limine*, the instruction is proper and necessary.

9                   This instruction contains an accurate statement of the law and is necessary to  
10 explain the legal parameters regarding key information and, more specifically,  
11 Romero's actions, that may have been learned after the incident by defendant deputy.  
12 "In a case . . . where what the officer perceived just prior to the use of force is in  
13 disputed, evidence that may support one version of events over another is relevant and  
14 admissible." *Boyd v. City & Cnty. of San Francisco*, 576 F.3d 938, 948-949 (9th Cir.  
15 2009).

16                  In *Boyd*, the suspect had attempted to kidnap two separate girls at gunpoint: each  
17 of the girls resisted and the second girl called the police. *See Boyd*, 576 F.3d at 941-  
18 942. Local police then pursued; and during the high-speed pursuit, suspect Boyd fired  
19 out of his vehicle at the officers. *Id.* When Boyd finally stopped his car, officers  
20 surrounded the car and, at gunpoint, ordered the suspect to get out of the car, show his  
21 hands, and get down on the ground. *Id.* Suspect Boyd, who had prosthetic lower legs,  
22 initially got out of the car with his hands up, but then – instead of getting down on the  
23 ground – he walked toward the officers, then walked back to the car, sat on the dash,  
24 and reached inside the vehicle with his hands momentarily out of view. *Id.* Believing  
25 that Boyd might be reaching for a weapon, the defendant officer fired on Boyd, killing  
26 him. *Id.* Boyd's family sued the city and officer for excessive force, claiming that Boyd  
27 had been trying to surrender when he was shot, and that his hesitancy to get down on  
28 the ground had been innocuous due to mobility limitations arising from his prosthetic

1 legs. *Id.* The family thus disputed that the final vehicle-gun-reach occurred (*i.e.*, they  
2 argued there was no threat). *Id.*

3 In response, at trial and over the Boyd family's objections, the trial court admitted  
4 defendants' evidence to support a defense theory that Boyd had engaged in the  
5 provocative actions at issue in an effort to commit suicide-by-cop – even though none  
6 of the disputed evidence constituted facts known to the involved officers *during* the  
7 incident. *Id.* Specifically, the defendants attacked the Boyd contention about lack of  
8 mobility due to prosthetics by putting on evidence that just three days before the  
9 shooting, Boyd had been arrested for reckless driving and, when ordered out of the car  
10 and onto the ground by those prior-incident officers, Boyd had complied and got down  
11 on the ground without assistance or issue. *Id.* at 942-945.

12 On review, notwithstanding the Boyd family's contentions that such evidence was  
13 irrelevant (under Fed. R. Evid. 401) and unfairly prejudicial (under Fed. R. Evid. 403),  
14 the Ninth Circuit *Boyd* Court affirmed the admission of evidence of pre-incident and  
15 incident facts, even though they were unknown to the involved officers during the  
16 incident. In doing so, the *Boyd* Court held that such evidence was admissible because  
17 such unknown-to-the-officer evidence showed that Boyd had a motive, intent, and plan  
18 *during* the incident that was the result of events that had occurred *before* the incident  
19 encounter with defendant officers. *See id.* And that the existence of such motive, intent,  
20 and plan (in the *Boyd* case, suicide-by-cop) made it more likely that Boyd acted in the  
21 threatening, deliberately non-compliant manner *during* the incident as described by the  
22 defendant officer. *See id.*

23 Thus, this instruction is essential to explain the defendant deputy's observations  
24 of Barber's conduct and behavior before and during the use of force incident,  
25 specifically Barber's criminal history of interacting with law enforcement and that  
26 Barber had intent, motive, and a plan to harm the deputy due to being on probation  
27 and likely going to prison, and that any information learned after the fact by deputy  
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1 that supports his observations can be used for the limited purpose explained in the  
2 instruction.

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1 **DISPUTED JURY INSTRUCTION NO. 3: PARTICULAR RIGHTS—FOURTH**  
2 **AMENDMENT—UNREASONABLE SEIZURE OF PERSON — EXCESSIVE**  
3 **FORCE**

5 **DEFENDANTS' VERSION OF PARTICULAR RIGHTS—FOURTH**  
6 **AMENDMENT—UNREASONABLE SEIZURE OF PERSON — EXCESSIVE**  
7 **FORCE**

9 In general, a seizure of a person is unreasonable under the Fourth Amendment if  
10 a police officer uses excessive force in making a lawful arrest, in defending himself or  
11 others, and/or in attempting to stop a fleeing or escaping suspect. Therefore, in order to  
12 prove an unreasonable seizure in this case, the plaintiffs must prove by a preponderance  
13 of the evidence that defendant DEPUTY CHRISTOPHER ALFRED used excessive  
14 force on STEFFON BARBER during the incident at issue in this case.

15 Under the Fourth Amendment, a peace officer may use only such force as is  
16 "objectively reasonable" under all of the circumstances. You must judge the  
17 reasonableness of a particular use of force from the perspective of a reasonable officer  
18 on the scene and not with the 20/20 vision of hindsight. Although the facts known to  
19 the officer are relevant to your inquiry, an officer's subjective intent or motive is not  
20 relevant to your inquiry.

21 In determining whether the officer used excessive force in this case, consider all  
22 of the circumstances known to the officer on the scene, including:

- 23 (1) whether the Plaintiff posed an **immediate threat to the safety** of the officer  
24 or to others;
- 25 (2) the nature of the crime or other circumstances known to the officer at the  
26 time force was applied;
- 27 (3) whether the Plaintiff was actively resisting arrest or attempting to evade  
28 arrest by flight;

- (4) the amount of time the officer had to determine the type and amount of force that reasonably appeared necessary, and any changing circumstances during that period;
  - (5) the relationship between the need for the use of force and the amount of force used;
  - (6) the number of lives at risk (motorists, pedestrians, police officers) and the parties' relative culpability; *i.e.*, which party created the dangerous situation, and which party is more innocent;
  - (7) any effort made by the officer to temper or to limit the amount of force; and
  - (8) the severity of the security problem at issue.

"Probable cause" exists when, under all of the circumstances known to the officer at the time, an objectively reasonable peace officer would conclude there is a fair probability that the Plaintiff has committed or was committing a crime.

**SOURCE:** Ninth Circuit Manual of Model Jury Instructions, Civil (2017), § 9.25 (as modified); *Mattos v. Agarano*, 661 F.3d 433, 441-442 (9th Cir. 2011) (prioritizing the factors of *Graham v. Connor*, 490 U.S. 386 (1989)).

## TO BE GIVEN

## GIVEN AS MODIFIED

## WITHDRAWN

## REFUSED

1                   **PLAINTIFF'S VERSION OF PARTICULAR RIGHTS—FOURTH**  
2                   **AMENDMENT—UNREASONABLE SEIZURE OF PERSON — EXCESSIVE**  
3                   **FORCE**

4                   In general, a seizure of a person is unreasonable under the Fourth Amendment  
5 if a police officer **or sheriff's deputy** uses excessive force in making a lawful arrest, in  
6 defending himself or others, and/or in attempting to stop a fleeing or escaping suspect.  
7 Therefore, in order to prove an unreasonable seizure in this case, **the plaintiffs**  
8 **Plaintiff Steffon Barber** must prove by a preponderance of the evidence that  
9 Defendant Deputy Christopher Alfred used excessive force **when he shot Plaintiff**  
10 **Steffon Barber on STEFFON BARBER during the incident at issue in this case.**

11                  Under the Fourth Amendment, a peace officer may use only such force as is  
12 "objectively reasonable" under all of the circumstances. You must judge the  
13 reasonableness of a particular use of force from the perspective of a reasonable officer  
14 on the scene and not with the 20/20 vision of hindsight. Although the facts known to  
15 the officer are relevant to your inquiry, an officer's subjective intent or motive is not  
16 relevant to your inquiry.

17                  In determining whether **Deputy Christopher Alfred the officer** used excessive  
18 force in this case, consider all of the circumstances known to **Deputy Alfred, the**  
19 **officer on the scene** including:

- 20                  (1)       the nature of the crime or other circumstances known to **Deputy Alfred**  
21                   **the officer** at the time **of the shooting force was applied**;
- 22                  (2)       whether **Mr. Barber the Plaintiff** posed an immediate threat **to the safety**  
23                   **of the officer** of death or serious bodily injury to **Deputy Alfred** or to  
24                   others;
- 25                  (3)       whether **Mr. Barber the Plaintiff** was actively resisting arrest or  
26                   attempting to evade arrest by flight;

- 1       (4) the amount of time **Deputy Alfred the officer** had to determine the type
- 2                  and amount of force that reasonably appeared necessary, and any
- 3                  changing circumstances during that period;
- 4       (5) the relationship between the need for the use of force and the amount of
- 5                  force used;
- 6       (6) **the extent of Mr. Barber's injury;**
- 7       (7) any effort made by **Deputy Alfred the officer** to temper or to limit the
- 8                  amount of force;
- 9       (8) the severity of the security problem at issue;
- 10      (9) **the availability of alternative methods;**
- 11     (10) the number of lives at risk (motorists, pedestrians, police officers) and the
- 12                  parties' relative culpability; *i.e.*, which party created the dangerous
- 13                  situation, and which party is more innocent;
- 14     (11) whether it was practical for Deputy Alfred to give a warning of the
- 15                  imminent use of force, and whether such warning was given;
- 16     (12) whether a reasonable officer would have or should have accurately
- 17                  perceived a mistaken fact.

18       “Probable cause” exists when, under all of the circumstances known to the  
19       officer at the time, an objectively reasonable peace officer would conclude there is a  
20       fair probability that the Plaintiff has committed or was committing a crime.

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22       **SOURCE:** Ninth Circuit Manual of Model Jury Instructions, Civil (2017), § 9.25  
23       (as modified).

1                   **PLAINTIFF'S ARGUMENT RE: FOURTH AMENDMENT—**  
2                   **UNREASONABLE SEIZURE OF PERSON — EXCESSIVE FORCE**

3                   The primary dispute between the Parties on this instruction is Plaintiff's  
4 appropriate modification to element No. 2. Where the use of deadly force is  
5 considered, the appropriate standard is whether the decedent posed an *immediate*  
6 *threat of death or serious bodily injury* to any person at the time of the  
7 shooting. Plaintiff has made this key modification to the model instruction in  
8 Plaintiff's proposed version of this instruction. Defendants' version proposes the  
9 language "threat to safety," which does not apply to this case, where deadly force was  
10 used. See, e.g., *Graham v. Connor*, 490 U.S 386, 396 (1989). Further, Defendants'  
11 version of this instruction excludes several relevant factors articulated in the model  
12 instruction.

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1                   **DEFENDANTS' ARGUMENT RE: FOURTH AMENDMENT—**  
2                   **UNREASONABLE SEIZURE OF PERSON — EXCESSIVE FORCE**

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4                   Defendants do not agree with the addition of elements 6, 7, 10, 11, and 12 in  
5 Plaintiff's proposed version of this Instruction. These elements do not relate to the  
6 underlying facts of this case nor the required elements of Plaintiff's claims.

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1           **DEFENDANTS' PROPOSED DISPUTED JURY INSTRUCTION NO. 4:**  
2           **STANDARD FOR CALIFORNIA LAW CLAIMS REGARDING**  
3           **REASONABLENESS RELATED TO A SEIZURE IS GOVERNED BY THE**  
4           **U.S. FOURTH AMENDMENT**

5  
6           Under California law, where a peace officer's seizure (including a use of force)  
7 is found to be objectively reasonable under the federal Fourth Amendment standard –  
8 namely, where from the perspective of a reasonable police officer, the defendant  
9 officer's use of force is objectively reasonable under the totality of the circumstances –  
10 that officer's seizure/use of force is also reasonable under California law, including  
11 California law claims for battery/excessive force, assault, and/or negligence in force or  
12 pre-force tactics.

13           If you find that a defendant officer's seizure/use of force is objectively reasonable  
14 under the federal Fourth Amendment standard, you must find that defendant officer's  
15 seizure/use of force to be objectively reasonable in evaluating plaintiff's California law  
16 claims related to a seizure (including a use of force).

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18           **SOURCE: SPECIAL: Hayes v. County of San Diego, 57 Cal.4th 622, 637-639**  
19           **(2013); Yount v. City of Sacramento, 43 Cal.4th 885, 902 (2008); Martinez v. County**  
20           **of Los Angeles, 47 Cal.App.4th 334, 349-350 (1996); Edson v. City of Anaheim, 63**  
21           **Cal.App.4th 1269, 1272-1273 (2009); Lopez v. City of Los Angeles, 196 Cal.App.4th**  
22           **675, 690-692 (2011); see also Cal. Gov. Code §§ 815.2, 820, 820.2, 820.4, 820.8, 821;**  
23           **Munoz v. City of Union City, 120 Cal.App.4th 1077, 1101-1103 (2004); Brown v.**  
24           **Ransweiler, 171 Cal.App.4th 516, 525 (2009); Young v. County of Los Angeles, 655**  
25           **F.3d 1156, 1170 (9th Cir. 2011); Hayes v. County of San Diego, 736 F.3d 1223, 1232**  
26           **(9th Cir. 2013); CACI no. 1300, 1301.**

1 TO BE GIVEN \_\_\_\_\_

2 GIVEN AS MODIFIED \_\_\_\_\_

3 WITHDRAWN \_\_\_\_\_

4 REFUSED \_\_\_\_\_

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1                   **PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED DISPUTED**  
2                   **JURY INSTRUCTION 4: STANDARD FOR CALIFORNIA LAW CLAIMS**  
3                   **REGARDING REASONABLENESS RELATED TO A SEIZURE IS**  
4                   **GOVERNED BY THE U.S. FOURTH AMENDMENT**

5                   This instruction proposed by Defendants is not based on any model instruction  
6 and is not an accurate statement of the law. CACI 441 adequately instructs the jury on  
7 Plaintiff's negligence claim, and CACI 1305B adequately instructs the jury on  
8 Plaintiff's battery claim. CACI 441 and CACI 1305B contain different language from  
9 the Ninth Circuit model jury instruction on Excessive Force (No. 9.25). For example,  
10 the Ninth Circuit instruction on Excessive Force contains the language "threat to  
11 safety," whereas CACI 1305B contains the language "imminent threat of death or  
12 serious bodily injury." Both CACI 441 and 1305B also use the language "necessary to  
13 defend human life." CACI 1305B also contains the following language that is not part  
14 of the Ninth Circuit instruction on Excessive Force:

15                  A threat of death or serious bodily injury is "imminent" when, based on  
16 the totality of the circumstances, a reasonable officer in the same situation  
17 would believe that a person has the present ability, opportunity, and  
18 apparent intent to immediately cause death or serious bodily injury to the  
19 peace officer or another person. An imminent harm is not merely a fear of  
20 future harm, no matter how great the fear and no matter how great the  
likelihood of the harm, but is one that, from appearances, must be instantly  
confronted and addressed.

21 CACI 441 also takes into consideration the officer's pre-shooting negligent tactics,  
22 which is not contained in the Ninth Circuit instruction on Excessive Force, as follows:

23                  In determining whether Defendant Christopher Alfred's use of deadly  
24 force was necessary in defense of human life, you must consider Defendant  
25 Christopher Alfred's tactical conduct and decisions before using deadly  
26 force on Steffon Barber and whether Defendant Christopher Alfred used  
other available resources and techniques as an alternative to deadly force,  
if it was reasonably safe and feasible to an objectively reasonable officer.

27 Defendants' special instruction therefore should not be given.  
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1           **DEFENDANTS' ARGUMENT RE: STANDARD FOR CALIFORNIA LAW**  
2           **CLAIMS REGARDING REASONABLENESS RELATED TO A SEIZURE IS**  
3           **GOVERNED BY THE U.S. FOURTH AMENDMENT**

5           This instruction contains an accurate statement of the proper legal standard for  
6 deciding plaintiff's force-based claims under California law. *See Hayes v. County of*  
7 *San Diego* (2013) 57 Cal.4th 622, 637-639 (adopting *Graham* reasonableness standard  
8 for seizure-related negligence claims against officers but clarifying that scope of  
9 liability may extend to pre-seizure conduct under certain circumstances); *Martinez v.*  
10 *County of Los Angeles* (1996) 47 Cal.App.4th 334, 349-350 (citing Cal. Penal Code  
11 § 196 and holding that where officers used reasonable force under the Fourth  
12 Amendment standards, there could be no liability under comparable state-law torts);  
13 see also Cal. Penal Code § 196, Cal. Penal Code § 835a, and Cal. Penal Code §  
14 836.5(b); *Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1272-1273 (holding  
15 that the standard for reasonable force under state assault/battery law is the same as it is  
16 for federal excessive force cases); *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516,  
17 525 (2009) (holding that an officer is immune from any state-law claim for negligence  
18 in "pre-shooting conduct" and tactical decisions associated with the use of force where  
19 the use of force itself is reasonable under the Fourth Amendment standard).

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1                   **PROPOSED DISPUTED JURY INSTRUCTION 5: BATTERY**

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3                   **DEFENDANTS' VERSION: ELEMENTS OF BATTERY—UNREASONABLE**

4                   **FORCE CLAIM UNDER CALIFORNIA LAW**

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6                   Under California law, Plaintiff claims that defendant DEPUTY CHRISTOPHER  
7 ALFRED harmed STEFFON BARBER by using unreasonable force to arrest him,  
8 prevent his escape, and/or overcome his resistance. To establish this claim, plaintiffs  
9 must prove all of the following:

- 10                  1. That defendant DEPUTY ALFRED intentionally touched Plaintiff or  
11 caused Plaintiff to be touched;
- 12                  2. That defendant DEPUTY ALFRED used unreasonable force to arrest,  
13 prevent the escape of, and/or to overcome the resistance of Plaintiff;
- 14                  3. That Plaintiff did not consent to the use of that force;
- 15                  4. That Plaintiff was harmed; and
- 16                  5. That defendant DEPUTY ALFRED'S use of unreasonable force was a  
17 substantial factor in causing Plaintiff's harm.

18                  A law enforcement officer may use reasonable force to arrest or detain a person  
19 when he or she has reasonable cause to believe that that person has committed a crime.  
20 Even if the officer is mistaken, a person being arrested or detained has a duty not to use  
21 force to resist the officer unless the officer is using unreasonable force.

22                  In deciding whether defendant DEPUTY ALFRED used unreasonable force, you  
23 must determine the amount of force that would have appeared reasonable to an officer  
24 in DEPUTY ALFRED'S position under the same or similar circumstances. You should  
25 consider, among other factors, the following:

- 26                  (a) Whether Plaintiff reasonably appeared to pose an immediate threat to the  
27 safety of DEPUTY ALFRED or others;
- 28                  (b) The seriousness of the crime at issue; and

1                   (c) Whether Plaintiff was actively resisting arrest or attempting to evade  
2 arrest.

3                   An officer who makes or attempts to make an arrest is not required to retreat or  
4 cease from his or her efforts because of the resistance or threatened resistance of the  
5 person being arrested.

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7 **SOURCE:** Judicial Council of Cal., Civil Jury Instructions (“CACI”) no. 1305  
8 (2021) (as modified).

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10 TO BE GIVEN \_\_\_\_\_

11 GIVEN AS MODIFIED \_\_\_\_\_

12 WITHDRAWN \_\_\_\_\_

13 REFUSED \_\_\_\_\_

1           **PLAINTIFF'S VERSION OF BATTERY BY PEACE OFFICER (DEADLY**  
2           **FORCE)—ESSENTIAL FACTUAL ELEMENTS**

3           A peace officer may use deadly force only when necessary in defense of human  
4 life. Plaintiff Steffon Barber claims that Defendant Christopher Alfred unnecessarily  
5 used deadly force on him. To establish this claim, Plaintiff Steffon Barber must prove  
6 all of the following:

- 7           1.       That Defendant Christopher Alfred intentionally ~~touched~~ shot Plaintiff  
8 Steffon Barber;
- 9           2.       That Defendant Christopher Alfred used deadly force on Plaintiff Steffon  
10 Barber;
- 11          3.       That Defendant Christopher Alfred's use of deadly force was ~~not~~  
12 ~~necessary to defend human life~~;
- 13          4.       That Plaintiff Steffon Barber was harmed; and
- 14          5.       That Defendant Christopher Alfred's use of deadly force was a  
15 substantial factor in causing Plaintiff Steffon Barber's harm.

16          Defendant Christopher Alfred's use of deadly force was necessary to defend  
17 human life only if a reasonable officer in the same situation would have believed,  
18 based on the totality of the circumstances known to or perceived by Defendant  
19 Christopher Alfred at the time, that deadly force was necessary to defend against an  
20 imminent threat of death or serious bodily harm to Defendant Christopher Alfred or to  
21 another person or to apprehend a fleeing person for a felony, when all of the following  
22 conditions are present:

- 23           i.       The felony threatened or resulted in death or serious bodily injury to  
24 another;
- 25           ii.      Defendant Christopher Alfred reasonably believed that the person fleeing  
26 would cause death or serious bodily injury to another unless immediately  
27 apprehended; and

1       iii. If practical under the circumstances, Defendant Christopher Alfred made  
2 reasonable efforts to identify himself as a peace officer and to warn that  
3 deadly force would be used, unless the officer had objectively reasonable  
4 grounds to believe the person is aware of those facts.

5       “Deadly force” means any use of force that creates a substantial risk of causing  
6 death or serious bodily injury, including, but not limited to, the discharge of a firearm.  
7 A threat of death or serious bodily injury is “imminent” when, based on the totality of  
8 the circumstances, a reasonable officer in the same situation would believe that a  
9 person has the present ability, opportunity, and apparent intent to immediately cause  
10 death or serious bodily injury to the peace officer or another person. An imminent  
11 harm is not merely a fear of future harm, no matter how great the fear and no matter  
12 how great the likelihood of the harm, but is one that, from appearances, must be  
13 instantly confronted and addressed.

14       “Totality of the circumstances” means all facts known to the peace officer at the  
15 time, including the conduct of Defendant Christopher Alfred and Plaintiff Steffon  
16 Barber leading up to the use of deadly force. In determining whether Defendant  
17 Christopher Alfred’s use of deadly force was necessary in defense of human life, you  
18 must consider Defendant Christopher Alfred’s tactical conduct and decisions before  
19 using deadly force on Plaintiff Steffon Barber and whether Defendant Christopher  
20 Alfred used other available resources and techniques as an alternative to deadly force,  
21 if it was reasonably safe and feasible to do so.

22       A peace officer who makes or attempts to make an arrest does not have to  
23 retreat or stop because the person being arrested is resisting or threatening to resist.  
24 Tactical repositioning or other deescalation tactics are not retreat. A peace officer does  
25 not lose the right to self-defense by use of objectively reasonable force to effect the  
26 arrest or to prevent escape or to overcome resistance. A peace officer does, however,  
27 have a duty to use reasonable tactical repositioning or other deescalation tactics.  
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1 **SOURCE: CACI 1305B, Battery by Peace Officer (Deadly Force) – Essential**  
2 **Factual Elements (2025 Ed.).**

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1                   **PLAINTIFF'S STATEMENT OF DISPUTE RE: BATTERY BY PEACE**  
2                   **OFFICER (DEADLY FORCE)**

3                   Plaintiff's proposed version of the battery instruction closely models the current  
4 version of CACI 1305B. Defendants' proposed version of this instruction is outdated.  
5 Importantly, Defendants' proposed version of this instruction uses outdated language  
6 "threat to the safety" as opposed to the new language contained in the current version  
7 of CACI 1305B "necessary to defend against an imminent threat of death or serious  
8 bodily harm." A comparison of Defendants' proposed version of this instruction with  
9 the current version of CACI 1305B also shows that Defendants' proposed version of  
10 the instruction excludes several paragraphs that are applicable to this case.

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1           **DEFENDANTS' RESPONSE RE: BATTERY BY PEACE OFFICER (DEADLY**  
2           **FORCE)**

3           Plaintiff's proposed version of the battery instruction is from 2025, which is  
4 after the date of the incident, April 27, 2021. The law applicable in this case is what  
5 existed at the time of the Incident. Defendants' proposed instruction is an accurate  
6 statement of the law in 2021 and taken from CACI 1305B.

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1           **PROPOSED DISPUTED JURY INSTRUCTION 6: NEGLIGENT USE OF**  
2           **DEADLY FORCE BY PEACE OFFICER - ESSENTIAL FACTUAL**  
3           **ELEMENTS**

5           **DEFENDANTS' VERSION OF NEGLIGENT USE OF DEADLY FORCE BY**  
6           **PEACE OFFICER - ESSENTIAL FACTUAL ELEMENTS**

8           A peace officer may use deadly force only when necessary in defense of human  
9 life. Plaintiff claims that DEPUTY CHRISTOPHER ALFRED was negligent in using  
10 deadly force to arrest, detain, or overcome the resistance of Plaintiff. To establish this  
11 claim, Plaintiff must prove all of the following:

- 12           1. That DEPUTY CHRISTOPHER ALFRED was a peace officer;  
13           2. That DEPUTY CHRISTOPHER ALFRED used deadly force on Plaintiff;  
14           3. That Plaintiff was harmed; and  
15           4. That DEPUTY CHRISTOPHER ALFRED's negligence was a substantial  
16 factor in causing Plaintiff's harm.

17           A threat of death or serious bodily injury is "imminent" if, based on the totality  
18 of the circumstances, a reasonable officer in the same situation would believe that a  
19 person has the present ability, opportunity, and apparent intent to immediately cause  
20 death or serious bodily injury to the peace officer or to another person. An imminent  
21 harm is not merely a fear of future harm, no matter how great the fear and no matter  
22 how great the likelihood of the harm, but is one that, from appearances, must be  
23 instantly confronted and addressed.

24           "Totality of the circumstances" means all facts known to or perceived by the  
25 peace officer at the time, including the conduct of DEPUTY CHRISTOPHER  
26 ALFRED and Plaintiff leading up to the use of deadly force. In determining whether  
27 DEPUTY CHRISTOPHER ALFRED's use of deadly force was necessary in defense  
28 of human life, you must consider DEPUTY CHRISTOPHER ALFRED's tactical

1 conduct and decisions before using deadly force on Plaintiff and whether DEPUTY  
2 CHRISTOPHER ALFRED used other available resources and techniques as an  
3 alternative to deadly force, if it was reasonably safe and feasible to an objectively  
4 reasonable officer.

5 A peace officer who makes or attempts to make an arrest does not have to  
6 retreat or stop because the person being arrested is resisting or threatening to resist.  
7 Tactical repositioning or other deescalation tactics are not retreat. A peace officer does  
8 not lose the right to self-defense by using objectively reasonable force to arrest,  
9 detain, or overcome resistance.

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11 **SOURCE:** Judicial Council of Cal., Civil Jury Instructions (“CACI”) no. 441  
12 (2020).

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14 TO BE GIVEN \_\_\_\_\_

15 GIVEN AS MODIFIED \_\_\_\_\_

16 WITHDRAWN \_\_\_\_\_

17 REFUSED \_\_\_\_\_

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1           **PLAINTIFF'S VERSION OF NEGLIGENT USE OF DEADLY FORCE BY**  
2           **PEACE OFFICER—ESSENTIAL FACTUAL ELEMENTS**

3           A peace officer may use deadly force only when necessary in defense of human  
4           life. Steffon Barber claims that Defendant Christopher Alfred was negligent in using  
5           deadly force to arrest or prevent escape of him.

6           To establish this claim, Plaintiff Steffon Barber must prove all of the following:

- 7           1.       That Defendant Christopher Alfred was a peace officer;
- 8           2.       That Defendant Christopher Alfred used deadly force on Steffon  
9           Barber;
- 10          3.       **That Defendant Christopher Alfred's use of deadly force was not  
11           necessary to defend human life;**
- 12          4.       That Steffon Barber was harmed; and
- 13          5.       That Defendant Christopher Alfred's use of deadly force was a  
14           substantial factor in causing Steffon Barber's harm.

15          Defendant Christopher Alfred's use of deadly force was necessary to defend  
16          human life only if a reasonable officer in the same situation would have believed,  
17          based on the totality of the circumstances known to or perceived by Defendant  
18          Christopher Alfred at the time, that deadly force was necessary either: to defend  
19          against an imminent threat of death or serious bodily injury to Defendant Christopher  
20          Alfred or another person; or to apprehend a fleeing person for a felony, when all of the  
21          following conditions are present:

- 22           i.       The felony threatened or resulted in death or serious bodily injury  
23           to another;
- 24           ii.      Defendant Christopher Alfred reasonably believed that the person  
25           fleeing would cause death or serious bodily injury to another  
26           unless immediately apprehended; and
- 27           iii.     Defendant Christopher Alfred made reasonable efforts to identify  
28           himself as a peace officer and to warn that deadly force may be

1                   used, unless the officer had objectively reasonable grounds to  
2                   believe the person is aware of those facts.

3                 “Deadly force” is force that creates a substantial risk of causing death or serious  
4                 bodily injury. It is not limited to the discharge of a firearm.

5                 A threat of death or serious bodily injury is “imminent” if, based on the totality  
6                 of the circumstances, a reasonable officer in the same situation would believe that a  
7                 person has the present ability, opportunity, and apparent intent to immediately cause  
8                 death or serious bodily injury to the peace officer or to another person. An imminent  
9                 harm is not merely a fear of future harm, no matter how great the fear and no matter  
10                 how great the likelihood of the harm, but is one that, from appearances, must be  
11                 instantly confronted and addressed.

12                 “Totality of the circumstances” means all facts known to or perceived by the  
13                 peace officer at the time, including the conduct of Defendant Christopher Alfred and  
14                 Steffon Barber leading up to the use of deadly force. In determining whether  
15                 Defendant Christopher Alfred’s use of deadly force was necessary in defense of  
16                 human life, you must consider Defendant Christopher Alfred’s tactical conduct and  
17                 decisions before using deadly force on Steffon Barber and whether Defendant  
18                 Christopher Alfred used other available resources and techniques as an alternative to  
19                 deadly force, if it was reasonably safe and feasible to an objectively reasonable  
20                 officer.

21                 A peace officer who makes or attempts to make an arrest does not have to  
22                 retreat or stop because the person being arrested is resisting or threatening to resist.  
23                 Tactical repositioning or other deescalation tactics are not retreat. A peace officer does  
24                 not lose the right to self-defense by using objectively reasonable force to arrest or  
25                 prevent escape.

26                 **SOURCE: CACI 441 (New November 2020, 2025 Ed.).**

1           **PLAINTIFF'S STATEMENT OF DISPUTE RE: NEGLIGENCE USE OF**  
2           **DEADLY FORCE BY PEACE OFFICER**

3           Plaintiff's proposed version of the instruction on Negligent Use of Deadly  
4 Force by Peace Officer closely models CACI 441. Importantly, Defendants' proposed  
5 version of this instruction omits the language "necessary to defend human life," as  
6 well as several factors/paragraphs that are applicable to this case.

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1           **DEFENDANTS' RESPONSE RE: NEGLIGENT USE OF DEADLY FORCE BY**  
2           **PEACE OFFICER**

3           Plaintiff's proposed version of the negligent use of deadly force instruction is  
4           from 2025, which is after the date of the incident, April 27, 2021. The law applicable  
5           in this case is what existed at the time of the Incident. Defendants' proposed  
6           instruction is an accurate statement of the law in 2021 and taken from CACI 441.

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1           **DEFENDANTS' PROPOSED DISPUTED JURY INSTRUCTION NO. 7:**

2           **NEGLIGENCE – "REASONABLENESS"**

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4           To evaluate whether the defendants were negligent under state law, the  
5 ‘reasonableness’ of a particular use of force must be judged from the perspective of a  
6 reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

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8           **SOURCE: SPECIAL:** *Hayes v. County of San Diego*, 57 Cal.4th 622, 632 (2013): In  
9 the pre-shooting negligence claim context, “as the nation’s high court has observed, ‘[t]he  
10 “reasonableness” of a particular use of force must be judged from the perspective of a  
11 reasonable officer on the scene, rather than with the 20/20 vision of hindsight.’ (*Graham v.  
Connor* (1989) 490 U.S. 386, 396.)”

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13           TO BE GIVEN \_\_\_\_\_

14           GIVEN AS MODIFIED \_\_\_\_\_

15           WITHDRAWN \_\_\_\_\_

16           REFUSED \_\_\_\_\_

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1           **PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED DISPUTED**  
2           **JURY INSTRUCTION RE: NEGLIGENCE – "REASONABLENESS"**

3           This instruction proposed by Defendants is not based on any model instruction.  
4 CACI 441 adequately instructs the jury on Plaintiff's negligence claim. No special  
5 instruction is needed.

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1           **DEFENDANTS' RESPONSE RE: NEGLIGENCE –**

2       **"REASONABLENESS"**: This instruction contains an accurate statement of the law  
3 under *Graham v. Connor*, 490 U.S. 386, 396-397 (1989), and is necessary to explain  
4 the attendant circumstances under which officers are often required to make the  
5 decision to use force.

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1           **DEFENDANTS' DISPUTED PROPOSED JURY INSTRUCTION NO. 8:**  
2           **REASONABLENESS UNDER CALIFORNIA LAW**  
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4           Under California law, where a peace officer's seizure/use of force is found to be  
5           objectively reasonable under the federal Fourth Amendment standard, which I read to  
6           you previously - namely, where from the perspective of a reasonable peace officer  
7           Defendant DEPUTY CHRISTOPHER ALFRED's use of force is objectively  
8           reasonable under California law, including California law claims for battery/excessive  
9           force and negligence.

10          If you find that Defendant DEPUTY CHRISTOPHER ALFRED's seizure/use of  
11         force is objectively reasonable under the federal Fourth Amendment standard, you must  
12         find that Defendant DEPUTY CHRISTOPHER ALFRED's seizure/use of force to be  
13         objectively reasonable in evaluating Plaintiff's California law claims related to a  
14         seizure/use of force.

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16          **SOURCE:** *Hayes v. County of San Diego*, 57 Cal.4th 622, 632 (2013)

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18          TO BE GIVEN \_\_\_\_\_  
19          GIVEN AS MODIFIED \_\_\_\_\_  
20          WITHDRAWN \_\_\_\_\_  
21          REFUSED \_\_\_\_\_

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1                   **PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED DISPUTED**  
2                   **JURY INSTRUCTION RE: REASONABLENESS UNDER CALIFORNIA**  
3                   **LAW**

4                   This instruction proposed by Defendants is not based on any model instruction  
5 and is not an accurate statement of the law. CACI 441 adequately instructs the jury on  
6 Plaintiff's negligence claim, and CACI 1305B adequately instructs the jury on  
7 Plaintiff's battery claim. CACI 441 and CACI 1305B contain different language from  
8 the Ninth Circuit model jury instruction on Excessive Force (No. 9.25). For example,  
9 the Ninth Circuit instruction on Excessive Force contains the language "threat to  
10 safety," whereas CACI 1305B contains the language "imminent threat of death or  
11 serious bodily injury." Both CACI 441 and 1305B also use the language "necessary to  
12 defend human life." CACI 1305B also contains the following language that is not part  
13 of the Ninth Circuit instruction on Excessive Force:

14                  A threat of death or serious bodily injury is "imminent" when, based on  
15 the totality of the circumstances, a reasonable officer in the same situation  
16 would believe that a person has the present ability, opportunity, and  
17 apparent intent to immediately cause death or serious bodily injury to the  
18 peace officer or another person. An imminent harm is not merely a fear of  
19 future harm, no matter how great the fear and no matter how great the  
likelihood of the harm, but is one that, from appearances, must be instantly  
confronted and addressed.

20                  CACI 441 also takes into consideration the officer's pre-shooting negligent tactics,  
21 which is not contained in the Ninth Circuit instruction on Excessive Force, as follows:

22                  In determining whether Defendant Christopher Alfred's use of deadly  
23 force was necessary in defense of human life, you must consider Defendant  
24 Christopher Alfred's tactical conduct and decisions before using deadly  
25 force on Steffon Barber and whether Defendant Christopher Alfred used  
other available resources and techniques as an alternative to deadly force,  
if it was reasonably safe and feasible to an objectively reasonable officer.

26                  Defendants' special instruction therefore should not be given.  
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1           **DEFENDANTS' RESPONSE RE: REASONABLENESS UNDER**

2           **CALIFORNIA LAW:** This instruction contains an accurate statement of the proper  
3 legal standard for deciding plaintiff's force-based claims under California law. *See*  
4 *Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 637-639 (adopting *Graham*  
5 reasonableness standard for seizure-related negligence claims against officers but  
6 clarifying that scope of liability may extend to pre-seizure conduct under certain  
7 circumstances); *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349-  
8 350 (citing Cal. Penal Code § 196 and holding that where officers used reasonable  
9 force under the Fourth Amendment standards, there could be no liability under  
10 comparable state-law torts); see also Cal. Penal Code § 196, Cal. Penal Code § 835a,  
11 and Cal. Penal Code § 836.5(b); *Edson v. City of Anaheim* (1998) 63 Cal.App.4th  
12 1269, 1272-1273 (holding that the standard for reasonable force under state  
13 assault/battery law is the same as it is for federal excessive force cases); *Brown v.*  
14 *Ransweiler* (2009) 171 Cal.App.4th 516, 525 (2009) (holding that an officer is  
15 immune from any state-law claim for negligence in “pre-shooting conduct” and  
16 tactical decisions associated with the use of force where the use of force itself is  
17 reasonable under the Fourth Amendment standard).

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1 **DEFENDANTS' DISPUTED PROPOSED JURY INSTRUCTION NO. 9:**

2 **REASONABLENESS AND SPLIT-SECOND JUDGMENTS**

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4 In evaluating a seizure or use of force by a police officer, the calculus of  
5 reasonableness must embody allowance for the fact that police officers are often forced  
6 to make split-second judgments – in circumstances that are tense, uncertain, and rapidly  
7 evolving.

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9 **SOURCE: SPECIAL: *Graham v. Connor*, 490 U.S. 386, 396-397 (1989); accord**  
10 ***Wilkinson v. Torres*, 610 F.3d 546, 550-551 (9th Cir. 2010).**

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12 TO BE GIVEN \_\_\_\_\_

13 GIVEN AS MODIFIED \_\_\_\_\_

14 WITHDRAWN \_\_\_\_\_

15 REFUSED \_\_\_\_\_

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1           **PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED DISPUTED**  
2           **JURY INSTRUCTION RE: REASONABLENESS AND SPLIT-SECOND**  
3           **JUDGMENTS**

4           This instruction proposed by Defendants is argumentative and is not based on  
5 any model instruction. CACI 441, CACI 1305B, and the Ninth Circuit Model Jury  
6 Instruction on Excessive Force (9.25) adequately instruct the jury on Plaintiff's  
7 substantive claims. No special instruction is needed. Defendants' proposed  
8 instruction is also argumentative and invades the province of the jury by purporting to  
9 instruct them that Deputy Alfred had to make a split-second judgment and that the  
10 situation was tense and rapidly evolving, which are disputed issues for the jury to  
11 resolve.

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1           **DEFENDANTS' RESPONSE RE: REASONABLENESS AND SPLIT-**  
2           **SECOND JUDGMENTS:** This instruction contains an accurate statement of the law  
3 under *Graham v. Connor*, 490 U.S. 386, 396-397 (1989), and is necessary to explain  
4 the attendant circumstances under which officers are often required to make the  
5 decision to use force.

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1                   **DISPUTED PROPOSED JURY INSTRUCTION NO. 10: COMPARATIVE**  
2                   **NEGLIGENCE OF PLAINTIFF**  
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4                   **DEFENDANTS' VERSION OF COMPARATIVE NEGLIGENCE OF**  
5                   **PLAINTIFF**  
6

7                   Defendants claim that Plaintiff's own negligence contributed to his harm. To  
8 succeed on this claim, defendants must prove both of the following by a preponderance  
9 of the evidence:

- 10                  1.       That plaintiff STEFFON BARBER was negligent; and  
11                  2.       That the negligence of plaintiff STEFFON BARBER was a substantial  
12 factor in causing his harm.

13                  If defendants prove the above, Plaintiff's damages **on his California law claims**  
14 are reduced by your determination of the percentage of plaintiff STEFFON BARBER'S  
15 responsibility. I will calculate the actual reduction.

16                  Ordinary Negligence is the failure to use reasonable care to prevent harm to  
17 oneself or to others.

18                  A person can be negligent by acting or by failing to act. A person is negligent if  
19 he or she does something that a reasonably careful person would not do in the same  
20 situation or fails to do something that a reasonably careful person would do in the same  
21 situation.

22                  You must decide how a reasonably careful person would have acted in STEFFON  
23 BARBER'S situation.

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25                  **SOURCE: Judicial Council of Cal., Civil Jury Instructions ("CACI") nos. 401,**  
26 **405 (2021).**

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1 TO BE GIVEN \_\_\_\_\_

2 GIVEN AS MODIFIED \_\_\_\_\_

3 WITHDRAWN \_\_\_\_\_

4 REFUSED \_\_\_\_\_

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1                   **PLAINTIFF'S VERSION OF COMPARATIVE NEGLIGENCE OF**  
2                   **PLAINTIFF**

3                   Defendants claim that Plaintiff Steffon Barber's own negligence contributed to  
4 his harm. To succeed on this claim, Defendants must prove both of the following:  
5

- 6                   1. That Plaintiff Steffon Barber was negligent; and  
7                   2. That Plaintiff Steffon Barber's negligence was a substantial factor in  
8                   causing his harm.

9                   If Defendants prove the above, Plaintiff Steffon Barber's damages **on his**  
10 **negligence claim only** are reduced by your determination of the percentage of Plaintiff  
11 Steffon Barber's responsibility. I will calculate the actual reduction.  
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14                   **SOURCE: CACI 405 (2025 Ed.).**

15                   TO BE GIVEN \_\_\_\_\_

16                   GIVEN AS MODIFIED \_\_\_\_\_

17                   WITHDRAWN \_\_\_\_\_

18                   REFUSED \_\_\_\_\_

1                   **PLAINTIFF'S STATEMENT OF DISPUTE RE: COMPARATIVE**  
2                   **NEGLIGENCE OF PLAINTIFF**  
3

4                   Defendants' language in their proposed instruction reading "If defendants prove  
5 the above, Plaintiff's damages on their California law claims are reduced by your  
6 determination of the percentage of plaintiff STEFFON BARBER'S responsibility" is a  
7 misstatement of the law." Plaintiff has claims for intentional torts (battery, IIED, and  
8 violation of the Bane Act) in this case, and California's comparative fault doctrine  
9 does not apply to intentional torts. *See, e.g., Thomas v. Duggins Construction Co.,*  
10 *Inc.*, 139 Cal. App. 4th 1105, 1108 (2006); *B.B. v. County of Los Angeles*, 10 Cal. 5th  
11 1 (2020). Additionally, Defendants' proposed version of the comparative negligence  
12 instruction is argumentative in that it improperly focuses only on Plaintiff's conduct in  
13 the paragraphs added from CACI 401. If additional language is to be added, then it  
14 should address both Deputy Alfred's conduct and Steffon Barber's conduct.  
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1           **DEFENDANTS' RESPONSE RE: COMPARATIVE NEGLIGENCE**

2       Plaintiff's proposed version of the comparative negligence instruction is from  
3       2025, which is after the date of the incident, April 27, 2021. The law applicable in this  
4       case is what existed at the time of the Incident. Defendants' proposed instruction is an  
5       accurate statement of the law in 2021 and taken from CACI 401 and 405.

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1                   **PLAINTIFF'S DISPUTED PROPOSED JURY INSTRUCTION 11:**  
2                   **CAUSATION—MULTIPLE CAUSES**

3                   A person's conduct may combine with another factor to cause harm. If  
4 you find that Defendant Christopher Alfred's conduct was a substantial factor in  
5 causing Plaintiff Steffon Barber's harm, then Defendant Christopher Alfred cannot  
6 avoid responsibility just because some other person, condition, or event was also a  
7 substantial factor in causing Plaintiff Steffon Barber's harm.

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10                  **SOURCE: CACI 431 (2025 Ed.).**

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1           **DEFENDANTS' OBJECTION RE: CAUSATION—MULTIPLE CAUSES**

2           Plaintiff's proposed Causation instruction is from 2025, which is after the date  
3 of the incident, April 27, 2021. The law applicable in this case is what existed at the  
4 time of the Incident. This instruction is not necessary as to multiple causes of harm as  
5 Plaintiff has not identified any other causes of harm other than the injuries sustained  
6 as a result of the gunshot wound during the Incident.

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1                   **PROPOSED DISPUTED JURY INSTRUCTION 12: BANE ACT**

2

3                   **PLAINTIFF'S VERSION OF BANE ACT**

4

5                   Plaintiff claims that Defendant Christopher Alfred intentionally interfered with  
6 Steffon Barber's constitutional right to be free from excessive force under state law by  
7 using excessive force against him.

8                   To establish this claim, Plaintiff must prove:

- 9                   1. Defendant Christopher Alfred used excessive force;
- 10                  2. Defendant Christopher Alfred intended to violate Steffon Barber's  
11                  constitutional rights, demonstrated by a reckless disregard for Steffon Barber's  
12                  constitutional right to be free from excessive force; and
- 13                  3. The excessive force resulted in harm, injury, or damage to Steffon Barber.

14

15                  **SOURCE: Reese v. County of Sacramento, 888 F.3d 1030, 1043 (9th Cir. 2018)**  
16                  (citing *Cornell v. City and County of San Francisco*, 17 Cal. App. 5th 766, 801-802  
17                  (2017)).

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1                   **DEFENDANTS' VERSION OF BANE ACT– INTERFERENCE WITH**  
2                   **CONSTITUTIONAL RIGHTS\***

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4                   Plaintiff claims that Defendant Deputy Alfred intentionally interfered with, or  
5                   attempted to interfere with, the civil rights of plaintiff by threats, intimidation, or  
6                   coercion.

7                   To establish this claim, plaintiff must prove all of the following:

8                   1.       That by threats, intimidation or coercion, Deputy Alfred caused Mr. Barber  
9                   to reasonably believe that if he exercised his right to be free from unreasonable seizure,  
10                  Deputy Alfred would commit violence against him and that Deputy Alfred had the  
11                  apparent ability to carry out the threats;

12                  [OR]

13                  1.       That Deputy Alfred acted violently against Mr. Barber to prevent him  
14                  from exercising his right to be free from unreasonable seizures or to retaliate for having  
15                  exercised his right to be free from unreasonable seizures;

16                  2.       That Deputy Alfred intended to deprive Mr. Barber of the enjoyment of  
17                  the interests protected by the right to be free from unreasonable seizures;

18                  3.       That Mr. Barber was harmed; and

19                  4.       That the conduct of Deputy Alfred was a substantial factor in causing Mr.  
20                  Barber's harm.

21                  **SOURCE: SPECIAL:** Judicial Council of Cal., Civil Jury Instructions (“CACI”) no.  
22                  3066 (as modified); Cal. Civ. Code § 52.1; *Cornell v. City & County of San*  
23                  *Francisco*, 2017 Cal.App.LEXIS 1011, \*58-60 (Cal. Ct. App. Nov. 16, 2017) (holding  
24                  that, like federal analog 18 U.S.C. § 241, as opposed to 42 U.S.C. § 1983, Cal. Civ.  
25                  Code § 52.1 requires proof of a police officer’s “specific intent” to deprive the citizen  
26                  of the claimed, clearly applicable right – including proof of malice or recklessness, but  
27                  not negligence).

1                   **PLAINTIFF'S STATEMENT OF DISPUTE RE: BANE ACT**

2                   Defendants' proposed instruction on the Bane Act ignores *Reese v. County of*  
3 *Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018), which holds that "it is not  
4 necessary for the defendants to have been 'thinking in constitutional *or legal terms* at  
5 the time of the incidents, because a reckless disregard for a person's constitutional  
6 rights is evidence of a specific intent to deprive that person of those rights.'" 888 F.3d  
7 1030 (9th Cir. 2018) (quoting *United States v. Reese*, 2 F. 3d 870 (9th Cir. 1993)).  
8 Plaintiff submits that his version of the Bane Act instruction more accurately reflects  
9 the current state of the law.

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1                   **DEFENDANTS' STATEMENT RE: BANE ACT**

2                   Defendants proposed version of the Bane Act instruction is based on accurate  
3 statement of the law and CACI 3066 as of the date of the incident. Plaintiff's proposed  
4 instruction is missing the necessary CACI language for this claim.

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1           **DEFENDANTS' DISPUTED PROPOSED JURY INSTRUCTION NO. 13:**  
2           **DAMAGES—MITIGATION**  
3

4           The plaintiff has a duty to use reasonable efforts to mitigate damages. To  
5 mitigate means to avoid or reduce damages.

6           The defendants have the burden of proving by a preponderance of the evidence:

- 7           1. that the plaintiff failed to use reasonable efforts to mitigate damages; and  
8           2. the amount by which damages would have been mitigated.

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10          **SOURCE:** Ninth Circuit Manual of Model Jury Instructions, Civil (2017), § 5.3.  
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12          TO BE GIVEN \_\_\_\_\_  
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14          GIVEN AS MODIFIED \_\_\_\_\_  
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16          WITHDRAWN \_\_\_\_\_  
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18          REFUSED \_\_\_\_\_  
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1                   **PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED JURY**  
2                   **INSTRUCTION RE: MITIGATION OF DAMAGES**

3                   Plaintiff does not believe this instruction applies to this case. There is no  
4 evidence that Plaintiff could have done anything to mitigate his damages. Plaintiff has  
5 been incarcerated since the shooting incident. The Parties' proposed instruction  
6 regarding Comparative Fault (CACI 405) is sufficient to address any argument by  
7 Defendants that Plaintiff could have avoided being shot. Further, Plaintiff was taken  
8 into custody and incarcerated after the shooting. There is no evidence that Plaintiff  
9 could have mitigated his damages when he was incarcerated. Plaintiff has filed a  
10 motion in limine to exclude his criminal record. Providing this instruction to the jury  
11 may violate Plaintiff's desired ruling on that motion in limine.

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1                   **DEFENDANTS' RESPONSE RE: MITIGATION OF DAMAGES**

2                   Defendants propose the mitigation instruction because the evidence in this case  
3 demonstrates that Plaintiff has not been compliant with recommended treatment for  
4 the injuries he attributes to the Incident, including treatment recommended by his own  
5 experts. The instruction is a proper statement of the law and appropriate for this case.

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1           **DEFENDANTS' DISPUTED PROPOSED JURY INSTRUCTION NO. 14: NO**  
2           **DAMAGES IF NO LIABILITY**  
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4           If you find that plaintiff failed to prove by a preponderance of the evidence that  
5 any of the defendants violated Plaintiff's rights as claimed [in other words, if you find  
6 that none of the defendants are liable to the plaintiff], you must not award damages to  
7 plaintiff in this case.

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9           **SOURCE: SPECIAL: Judicial Council of Cal., Civil Jury Instructions ("CACI")**  
10           **no. 3900 (modified).**

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12          TO BE GIVEN \_\_\_\_\_

13          GIVEN AS MODIFIED \_\_\_\_\_

14          WITHDRAWN \_\_\_\_\_

15          REFUSED \_\_\_\_\_

1           **PLAINTIFF'S OBJECTION TO DEFENDANTS' DISPUTED PROPOSED**  
2           **JURY INSTRUCTION NO. 14: NO DAMAGES IF NO LIABILITY**

3           Plaintiff does not believe that this instruction is necessary for this case. The  
4 special verdict form in this case will instruct the jury on which questions to answer.  
5 This instruction is argumentative and could prejudice Plaintiff by influencing the jury  
6 not to award damages.

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1           **DEFENDANTS' RESPONSE RE NO DAMAGES IF NO LIABILITY**

2           **INSTRUCTION:** This statement contains an accurate statement of the law, and will  
3 assist the trier of fact to make a decision that is supported by applicable law. The  
4 instruction advises the jury that money does not need to be awarded in this case if the  
5 jury finds no liability against any Defendant.

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1           **DEFENDANTS' DISPUTED PROPOSED JURY INSTRUCTION NO. 15:**  
2           **JURORS NOT TO CONSIDER ATTORNEY FEES AND COURT COSTS**

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4           You must not consider, or include as part of any award, attorney fees or  
5 expenses that the parties incurred in bringing or defending this lawsuit.

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7           **SOURCE:** Judicial Council of Cal., Civil Jury Instructions ("CACI") no. 3964.

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9           TO BE GIVEN \_\_\_\_\_

10          GIVEN AS MODIFIED \_\_\_\_\_

11          WITHDRAWN \_\_\_\_\_

12          REFUSED \_\_\_\_\_

1           **PLAINTIFF'S OBJECTION TO DEFENDANTS' DISPUTED PROPOSED**  
2           **JURY INSTRUCTION 15: JURORS NOT TO CONSIDER ATTORNEY FEES**  
3           **AND COURT COSTS**

4           Plaintiff does not believe that this instruction is necessary for this case. The  
5 instruction on the measure and proof of damages will adequately instruct the jury on  
6 what damages to consider. This instruction is also argumentative and could prejudice  
7 Plaintiff by notifying the jury that there could be attorney fees and court costs.  
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1           **DEFENDANTS' RESPONSE RE JURORS NOT TO CONSIDER**

2           **ATTORNEY FEES AND COURT COSTS:** This statement contains an accurate  
3 statement of the law, and will assist the trier of fact to make a decision that is  
4 supported by applicable law. The instruction advises the jury that they are not to  
5 consider attorney's fees and costs on both sides. Only Defendants would be prejudiced  
6 if the jury were to consider Plaintiff's possible attorney's fees and costs when  
7 determining damages.

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**DISPUTED PROPOSED JURY INSTRUCTION 16: PUNITIVE DAMAGES –**

**PREDICATE – FEDERAL CLAIMS**

**DEFENDANTS' VERSION OF PUNITIVE DAMAGES – PREDICATE –**  
**FEDERAL CLAIMS**

Under federal law, if you find for the plaintiff on the Plaintiff's § 1983 claim for violations of Plaintiff's constitutional rights, you may, but are not required to, award punitive damages. The purposes of punitive damages are to punish a defendant and to deter similar acts in the future. Punitive damages may not be awarded to compensate a plaintiff.

The Plaintiff has the burden of proving by a preponderance of the evidence that punitive damages should be awarded, and, if so, the amount of any such damages.

You may award punitive damages only if you find that the defendant's conduct that harmed the plaintiff was malicious, oppressive or in reckless disregard of the Plaintiff's rights.

Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the purpose of injuring the plaintiffs.

Conduct is in reckless disregard of the Plaintiff's rights if, under the circumstances, it reflects complete indifference to the Plaintiff's safety or rights, or if the defendant acts in the face of a perceived risk that his actions will violate the Plaintiff's rights under federal law.

An act or omission is oppressive if the defendant injures or damages or otherwise violates the rights of the plaintiffs with unnecessary harshness or severity, such as by misusing or abusing authority or power or by taking advantage of some weakness or disability or misfortune of the plaintiffs.

If you find that punitive damages are appropriate, you must use reason in setting the amount. Punitive damages, if any, should be in an amount sufficient to fulfill their purposes but should not reflect bias, prejudice or sympathy toward any party. In

1 considering the amount of any punitive damages, consider the degree of reprehensibility  
2 of the defendant's conduct, including whether the conduct that harmed the plaintiffs  
3 was particularly reprehensible because it also caused actual harm or posed a substantial  
4 risk of harm to people who are not parties to this case. You may not, however, set the  
5 amount of any punitive damages in order to punish the defendant for harm to anyone  
6 other than the plaintiffs in this case.

7 In addition, you may consider the relationship of any award of punitive damages  
8 to any actual harm inflicted on the plaintiffs.

9 Punitive damages may not be awarded against defendant COUNTY OF SAN  
10 BERNARDINO.

11 Punitive damages may be awarded even if you award plaintiff only nominal, and  
12 not compensatory, damages.

13

14 **SOURCE:** Ninth Circuit Manual of Model Jury Instructions, Civil (2017), § 5.5.

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16 TO BE GIVEN \_\_\_\_\_

17 GIVEN AS MODIFIED \_\_\_\_\_

18 WITHDRAWN \_\_\_\_\_

19 REFUSED \_\_\_\_\_

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1                   **PLAINTIFF'S VERSION OF PUNITIVE DAMAGES – PREDICATE –**  
2                   **FEDERAL CLAIMS**

3                 If you find for the plaintiff, you may, but are not required to, award punitive  
4 damages against Defendant Christopher Alfred. The purposes of punitive damages are  
5 to punish a defendant and to deter similar acts in the future. Punitive damages may not  
6 be awarded to compensate a plaintiff.

7                 The plaintiff has the burden of proving by a preponderance of the evidence that  
8 punitive damages should be awarded.

9                 You may award punitive damages only if you find that the defendant's conduct  
10 that harmed the plaintiff was malicious, oppressive or in reckless disregard of the  
11 plaintiff's rights. Conduct is malicious if it is accompanied by ill will, or spite, or if it  
12 is for the purpose of injuring the plaintiff. Conduct is in reckless disregard of the  
13 plaintiff's rights if, under the circumstances, it reflects complete indifference to the  
14 plaintiff's safety or rights, or if the defendant acts in the face of a perceived risk that  
15 its actions will violate the plaintiff's rights under federal law. An act or omission is  
16 oppressive if the defendant injures or damages or otherwise violates the rights of the  
17 plaintiff with unnecessary harshness or severity, such as by misusing or abusing  
18 authority or power or by taking advantage of some weakness or disability or  
19 misfortune of the plaintiff.

20                 Punitive damages may not be awarded against the County of San Bernardino.  
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22                 **SOURCE:** Manual of Model Civil Jury Instructions for The District Courts of the  
23 Ninth Circuit (2023), 5.5 (modified).  
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1                   **PLAINTIFF'S STATEMENT OF DISPUTE RE: PUNITIVE DAMAGES –**  
2                   **PREDICATE – FEDERAL CLAIMS**

3                   Plaintiff believes his proposed instruction on the predicate question for punitive  
4                   damages is sufficient and more succinct.

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1           **DEFENDANTS' RESPONSE RE PUNITIVE DAMAGES – PREDICATE**

2           **- FEDERAL CLAIMS:** This statement contains an accurate statement of the law,  
3 and will assist the trier of fact to make a decision that is supported by applicable law.  
4 The instruction proposed by Defendants also matches what the law and instruction  
5 was as of the date of the incident in 2021, not the updated version in 2025.

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1           **DEFENDANTS' DISPUTED PROPOSED JURY INSTRUCTION NO. 17:**  
2           **PUNITIVE DAMAGES – INDIVIDUAL DEFENDANTS – BIFURCATED**  
3           **TRIAL (FIRST PHASE)**

5           If you decide that a defendant's conduct caused harm, you must decide whether  
6           that conduct justifies an award of punitive damages. At this time, you must decide  
7           whether Plaintiff has proved by clear and convincing evidence that defendant DEPUTY  
8           CHRISTOPHER ALFRED engaged in that conduct with malice, oppression, or fraud.  
9           The amount of punitive damages, if any, will be decided later.

10          "Malice" means that defendant DEPUTY CHRISTOPHER ALFRED acted with  
11          intent to cause injury or that DEPUTY CHRISTOPHER ALFRED's conduct was  
12          despicable and was done with a willful and knowing disregard of the rights or safety of  
13          another. A person acts with knowing disregard when he or she is aware of the probable  
14          dangerous consequences of his or her conduct and deliberately fails to avoid those  
15          consequences.

16          "Oppression" means that the conduct of defendant DEPUTY CHRISTOPHER  
17          ALFRED was despicable and subjected plaintiff to cruel and unjust hardship in  
18          knowing disregard of his or her rights.

19          "Despicable conduct" is conduct that is so vile, base, or contemptible that it would  
20          be looked down on and despised by reasonable people.

21          "Fraud" means that defendant DEPUTY CHRISTOPHER ALFRED  
22          intentionally misrepresented or concealed a material fact and did so intending to harm  
23          plaintiffs.

24

25          **SOURCE: Judicial Council of Cal., Civil Jury Instructions ("CACI") no. 3941**  
26          **(2021).**

27          TO BE GIVEN \_\_\_\_\_  
28          GIVEN AS MODIFIED \_\_\_\_\_

1 WITHDRAWN \_\_\_\_\_

2 REFUSED \_\_\_\_\_

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1           **DEFENDANTS' RESPONSE RE PUNITIVE DAMAGES – PREDICATE**

2           **- FEDERAL CLAIMS:** This statement contains an accurate statement of the law,  
3 and will assist the trier of fact to make a decision that is supported by applicable law.  
4 The instruction proposed by Defendants also matches what the law and instruction  
5 was as of the date of the incident in 2021.

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1           **DEFENDANTS' DISPUTED PROPOSED JURY INSTRUCTION 18:**  
2           **PUNITIVE DAMAGES – CALCULATION [TO BE READ IN PUNITIVE**  
3           **DAMAGES PHASE OF TRIAL ONLY]**

5           You must now decide the amount, if any, that you should award plaintiff in  
6           punitive damages. The purposes of punitive damages are to punish a wrongdoer for the  
7           conduct that harmed the plaintiff and to discourage similar conduct in the future.

8           There is no fixed formula for determining the amount of punitive damages, and  
9           you are not required to award any punitive damages. If you decide to award punitive  
10          damages, you should consider all of the following factors in determining the amount:

11           (a) How reprehensible was the conduct of defendant DEPUTY  
12          CHRISTOPHER ALFRED? In deciding how reprehensible the defendant's conduct  
13          was, you may consider, among other factors:

14           1. Whether the conduct caused physical harm;  
15           2. Whether that defendant disregarded the health or safety of others;  
16           3. Whether plaintiffs were financially weak or vulnerable and defendant  
17          DEPUTY CHRISTOPHER ALFRED knew such was financially weak or vulnerable  
18          and took advantage of them;

19           4. Whether defendant DEPUTY CHRISTOPHER ALFRED'S conduct  
20          involved a pattern or practice; and

21           5. Whether defendant DEPUTY CHRISTOPHER ALFRED acted with  
22          trickery or deceit.

23           (b) Is there a reasonable relationship between the amount of punitive damages  
24          and Plaintiff's harm?

25           (c) In view of defendant DEPUTY CHRISTOPHER ALFRED'S financial  
26          condition, what amount is necessary to punish him and discourage future wrongful  
27          conduct? You may not increase the punitive award above an amount that is otherwise

1 appropriate merely because a defendant has substantial financial resources. Any award  
2 you impose may not exceed defendant DEPUTY ALFRED'S ability to pay.

3 Punitive damages may not be used to punish a defendant for the impact of his or  
4 her alleged misconduct on persons other than plaintiffs.  
5

6 **SOURCE:** Judicial Council of Cal., Civil Jury Instructions (“CACI”) no. 3942  
7 (2021); *see also* Ninth Circuit Manual of Model Jury Instructions, Civil (2017), §  
8 5.5.

9  
10 TO BE GIVEN \_\_\_\_\_  
11 GIVEN AS MODIFIED \_\_\_\_\_  
12 WITHDRAWN \_\_\_\_\_  
13 REFUSED \_\_\_\_\_  
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1           **DEFENDANTS' RESPONSE RE PUNITIVE DAMAGES –**

2           **CALCULATION:** This statement contains an accurate statement of the law, and will  
3 assist the trier of fact to make a decision that is supported by applicable law. The  
4 instruction proposed by Defendants also matches what the law and instruction was as  
5 of the date of the incident in 2021.

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